XI-HC-22

02/11/07

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 217 of 2003

APPELLANT (In Jail) — Toranlal Yadav, son of Laluram Yadav, aged about 37 years, Occupation- Peol, resident of Village-Bagodar, Police Station-Kanker, District- Kanker, (CG)

VERSUS

RESPONDENT — The State of Chhattisgarh, through the District Magistrate, Kanker, District Kanker (C.G.)

Present:

Mr. Shivendu Pandya counsel for the appellant.

Mr. Neeraj Mehta, P.L. for the State/respondent.

ORAL JUDGMENT

(1st November 2007)

Dhirendra Mishra, J.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 1st February 2003 passed in S.T. No. 325/02 whereby learned First Additional Sessions Judge, Kanker has convicted the appellant under Sections 376 of the Indian Penal Code and sentenced him to undergo RI for 10 years, pay a fine of Rs. 1,000/- and in default of payment of fine to undergo additional RI for six months.

2. Case of the prosecution, in brief, is that the on 23.3.2002 the appellant took the prosecutrix, aged about six years, on the

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temptation of *Jalebi* and committed rape with her in the verandah of the school. He further asked her not to disclose this fact to others. On 27.3.2002 the prosecutrix started weeping at the time of taking bath and on being asked by her grand-mother (Nani) Jayanti, she disclosed about the incident. She examined her private part and saw that there was some swelling and blood was coming out. Panchayat was convened in the village and in the said Panchayat the appellant was also called, who confessed his guilt before the Panchayat. Thereafter, report was lodged by Rameshwar Kalar (PW-2) in the police station on 27th March 2002 itself.

3. During investigation the prosecutrix was sent for medical examination to Govt. K.D. Hospital, Kanker where Dr. (Mrs.) Hemlata Sahu (PW-8) examined her and gave her report of Ex.P/17. Vaginal slides and wearing apparels of the prosecutrix were taken into possession and the same were sent for chemical examination to Forensic Science Laboratory, Raipur. However, F.S.L. report was not produced during trial. After completing investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Kanker and the same was received by learned Additional Sessions Judge for trial.

4. During trial the prosecution examined 10 witnesses in all. Thereafter, statement of the accused was recorded wherein he pleaded innocence and false implication and stated that

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father of the prosecutrix had asked for Rs.5,000/-, which was denied by him and therefore, he has been falsely implicated by him in the above offence. He examined his wife Savitri Yadu as defence witness No. 1. However, learned trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

5. Learned counsel for the appellant argued that the appellant has been falsely implicated in this case. From perusal of the First Information Report and the medical examination report of the prosecutrix, it would be evident that it's a case of false implication as there is overwriting in the medical report of Ex.P/17 with respect to time. It is stated that the report was given around 11.00 p.m. on 27.3.2002 whereas the offence was registered on 27.3.2002 at about 19/20 hours. He further argued that version of the prosecutrix does not inspire confidence as from perusal of paragraph 2 of her statement it would be evident that after saying that the accused did not do anything, she has added the allegations of sexual intercourse subsequently. Even her grand-mother (Nani), to whom she disclosed about the incident for the first time, has not been examined and the prosecutrix has categorically stated that no Panchayat was convened in the village and whatever she was stating before the Court, she was

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित ५	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stating for the first time and before that she did not disclose this fact anywhere. With respect to extra judicial confession of the appellant before the Panchayat, it has been argued that witnesses of extra judicial confession namely P.W.-3 Narrotam, P.W.-4 Goverdhan and P.W.9 Rupdhar Jain have stated that they are deposing for the first time before the Court. It is further argued that though the witnesses have denied that the extra judicial confession was extracted after beating the appellant under threat, however, looking to the fact that they made this statement for the first time before the Court, their version could not be accepted. It is further argued that complainant Rameshwar had asked for Rs.5,000/- from the appellant, which the appellant denied and because of this he was falsely implicated in the above offence as is evident from the statement of defence witness No.1 Savitri Yadu.

6. On the other hand, learned counsel for the State has supported the impugned judgment of trial Court.

7. I have heard learned counsel for both the parties and have perused the material evidence available on record as also impugned judgment of the trial Court.

8. P.W.1 prosecutrix has stated that on the date of incident accused gave her *Jalebi* and thereafter took her to the kitchen of the school and there he inserted his genital organ into her

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vagina, as a result of which she suffered pain. He also asked her not to disclose this fact, therefore, she did not disclose this fact to others. On the next day when she went to take bath, she felt pain and then she disclosed this fact to her grand-mother (Nani). Her grand-mother also examined her private part. There was no Panchayat in the village. The lady doctor has examined her private part. She has admitted that her father consumes liquor, however, she has denied that for this purpose he asked money from the accused. She has denied the suggestion that her father had asked for Rs.5,000/- from the accused. She has stated that at the time of bathing her grand-mother had spotted puss and blood in her private part. She has further stated that whatever she is stating before the Court, she is stating for the first time and before that she never disclosed these facts anywhere. She has stoutly denied that she is deposing as taught by her grand-mother and grand-father.

9. PW-8 Dr. Hemlata Sahu, who examined the prosecutrix on 27th March 2002 noticed that there was no external injury on the person of the prosecutrix. On internal examination, she found that her hymen was ruptured, there was swelling, there was presence of puss and on pressing her stomach there was secretion of puss. She has further opined that symptoms of rape were present as hymen was ruptured and there is possibility of prosecutrix being raped before 3-4 days. In the

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cross-examination also she has stuck to her claim that there was a positive symptom of rape. Apart from the above evidence, the appellant made extra judicial confession before Panchayat that was recorded and the same bears signature of the appellant as also of the witnesses Narottam (PW-3), Goverdhan (PW-4) and Brijlal.

10. PW-3 Narottam has stated that the appellant was called in the Panchayat and he had confessed his guilt, which was recorded by Rupdhar Jain (PW-9). PW-9 Rudhar Jain has stated that the appellant confessed his guilt in the Panchayat whereupon he recorded the proceedings of Panchayat in Ex.P/8, P/4 and P/9. Similar is the statement of Goverdhan (PW-4).

11. So far as the submission of learned counsel for the appellant that all the witnesses of extra judicial confession have stated in their deposition that they are examined for the first time before the Court, is concerned, the charge sheet contains diary statements of these witnesses and there is no cross-examination by the defence that the alleged diary statements of these witnesses recorded during investigation, were in fact not given by them whereas the investigating officer in paragraph 7 of his deposition has categorically stated that he recorded the diary statements of these witnesses, therefore, simply on the basis of the statements of these witnesses before

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the Court, it cannot be presumed that the diary statements of these witnesses were not recorded earlier. So far as the other discrepancy with respect to the time present in the medical report and F.I.R. is concerned, the FIR was recorded at 19/20 hours whereas the prosecutrix was examined by the doctor around 11.00 clock in the night and only because there is overwriting in the time, the same would not render the investigation suspicious particularly when no question has been put to the doctor in this regard.

12. In the light of clinching evidence of the prosecutrix which is duly corroborated from the medical evidence as also from the statement of her grand-father (Nana) and further considering the extra judicial confession of the appellant made before the Panchayat, this Court is of the considered opinion that the trial Court has not committed any illegality or infirmity in convicting the appellant under Section 376 of IPC and sentencing him accordingly.

13. In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

[पीछे देखें